10.

A LETTER from a Justice of Peace TO A Counsellor at Law CONCERNING CONVENTICLES, With the Counsellors Reply.

SIR,

SInce I had the Honour of serving His Majesty in his Commission of the Peace for this County, I have not met with that danger and difficulty as hath lately occur'd, which compels me to crave your judicious Counsel and Advice. On *Monday* last, two Persons (of insolent behaviour) came to my House, stiling themselves Informers; these make Oath, that the day before at a private House, in a neighbour Village, were assembled several Persons, above the number of four, beside the Family, where was held a Conventicle or Religious Exercise, contrary to the Tenor of the late Act, and these Informers conjure me under the Penalty of 100 l. to Record the offence, and to leavy the Fines accordingly; wherenpon I sent for the Persons accused, and having them and the Informers face to face, I demanded, whether they would own themselves guilty of a Conventicle within that Act? They confess themselves present at a Religious Exercise, but deny it to be in other manner than according to the Liturgy and Practice of the Church of *England*; For (say they) we profess the same Faith with the Church of *England*, Preach and maintain the same Doctrine, Worship the same God, through the one Mediator, and by his Spirit; We admit Persons of all Ages and Sexes to our Assembly, (a practice incompatible with Plots.) Whereupon I demanded of the Informers, (being upon their Oath) whether they could safely Swear, *In the Act*, That it was, *A pretended colourable Religious Exercise, in other manner than according to the Liturgy and Practice of the Church of* England; and withal cautioned them to consider, that if they Swore the Affirmative, they must necessarily know, what the Liturgy is, what the Church of *England*

is, what its Practice is, unto all which the Informers were able to give no other answer than this, That in as much as the Meeting was not in a Church or place of publick Worship, and no Common-Prayer read, (as they heard) this they took to be a Conventicle within that Act. Lastly, (at the request of the Defendants) I demanded of the Informers, Whether they were present from the beginning to the end of the Exercise? to which they answered Negatively. Sir, seeing the Act giveth me three Months time to deliberate on this Matter, I dismissed both Parties, and here send you the Case with your Fee, and crave your Opinion, Whether the Defendants are within this Statute as the Evidence stands? I am, Sir,

Your humble Servant.

The Answer.

Phanatick Foole.

SIR,

I Received your Letter and Fee, and for as much as the Determination of the Case proposed, depends upon our Knowledge of the genuine sense of the late Statute against Conventicles, I have studiously endeavoured to satisfie my own and your understanding, by considering, first the Title; secondly the Preface; and thirdly the Body of the Act, and do herewith offer you my Disquisition of the whole.

I. Of the Title, in these words, *An Act to prevent Seditious Conventicles.*

Sir, The Men of my Profession do generally say, that Titles of Acts are *Clavis Legum*, and serves as Contents to a Chapter: Now Sir, if you compare your Evidence with this Title, I find nothing of *Sedition* so much as suggested, much less proved.

Let it also be considered, that this Kingdom hath been Blessed with famous and worthy Justices of the Law, such as ever abhor'd harsh and severe Interpretations of Laws, especially where the Property and Liberty of the Subject hath been concerned: And though this Act tells you, that it must be construed, *Most largly and beneficially for the suppressing of Conventicles*, yet you (knowing what the words import) may not thence take Liberty to make any Conventicle a Crime which the Act doth not make so.

Wherefore my Opinion is upon the Title of the Act, and Evidence of the matter, the Defendants are not within the Act.

II. We now proceed to the Prefatory part of the Act, in these Words, *For providing more speedy Remedy against the growing and dangerous Practice of Seditious Sectaries, and other disloyal Persons, who under a pretence of tender Consciences, have or may at their Meeting, contrive Insurrections, as late Experience hath shewn.*

We must now compare this Preface with the Evidence, as it is offered in your Case, The Defendants in presence of the Informers, profess the Faith and Doctrine established in the Church of *England*, Worship the same God, and admit persons of all Ages and Sexes, which (say they) is incompatible with

Plots

Plots, &c. and all this the Informers ſeem to confeſs, at leaſt give no Evidence to the contrary; and it is a known *Axiom* in Law and Reaſon, *De non apparentibus & non exiſtentibus eadem ratio:* Wherefore I conclude the Defendants are not within the Preface of the Act.

III. But thirdly, it muſt be granted, that though neither the Title nor the Preface of (the Act) do reach the Defendants, yet the Body of the Act may. The words--*That if any perſon or perſons, above the Age of* 16 *years*, &c. *ſhall be preſent at any Aſſembly, Conventicle, or Meeting, under colour or pretence of any Exerciſe of Religion, in other manner than according to the Liturgy and Practice of the Church of* England, &c. *where there ſhall be five or more perſons Aſſembled over and above thoſe of the Houſhold*, &c.

Sir, I dare be poſitive in my Opinion, That if theſe words do not reach the Defendants, no part of the Act doth, wherefore every part of them deſerves a due conſideration; And firſt of theſe, *Whoſoever ſhall be preſent at any Aſſembly*, &c. *under colour or pretence of any Exerciſe of Religion*, &c.

To my utmoſt underſtanding there can but two ſences be put upon theſe words,

Firſt, Either a real truly Chriſtian-Exerciſe of Religion, which yet cannot be without its pretence and colour any more than the falſe one; or,

Secondly, Such an Exerciſe of Religion as carrieth only a pretence and colour, without Truth and Sincerity.

Our enquiry muſt be in which of theſe two ſences to interpret theſe words of the Act, and firſt of the firſt of theſe.

1. Whether theſe words can be conſtrued as intending to puniſh a real truly Chriſtian-Exerciſe of Religion.

Of this I ſhall firſt give you my Opinion, and then my Reaſon. My Opinion is, the words cannot with Reaſon and Charity be ſo underſtood;

My Reaſon is, becauſe I ſuſpect that ſuch an Interpretation would make this Statute a nullity in its ſelf; for that all Caſuiſts, Lawyers, and Divines, do agree, that every Law made againſt the Law of God, is null (*ipſo facto*) as to any obligation of Conſcience.

Now to demonſtrate that this ſence is contrary to the Law of God, let us firſt read the words according to this conſtruction, and they would run thus, *If any perſon or perſons, above the number of four, ſhall Worſhip God truly and ſincerely in other manner*, &c. *ſhall incur the Penalty of the Act.* If the Act had been thus Penned, I leave it to your Judgment how harſh it would ſeem to every Chriſtian-Ear, even the Legiſlators themſelves.

And now conſider how it will agree with theſe Scriptures following, 1 *Tim.* 2. *I will therefore that men pray every-where*, for number and place indefinite. *Acts* 28.30,31. *And Paul dwilt two whole years in his hired houſe, and received all that came to him, Preaching the Kingdom of God, no man forbidding him.* Mark 2. 1, 2. *And it was noiſed that he was in the houſe, and ſtraight many were gathered together, inſomuch as there was no Room for them.*

Sir, having perſonal Knowledg of your Loyalty to your Prince, and Reverence to his Laws, I have great reaſon to conclude, that you will abhor to interpret the ſence of this Branch of the Statute, that it intends to puniſh true and ſincere Religion where-ever Exerciſed; nor can the number, more or leſs, give any turpitude or innocency; for if the Worſhip in it ſelf be Evil, it is intollerable in four, if good, fourſcore cannot make it evil: Wherefore, we having but our choice of two Interpretations, (it being beyond my reach to conceive a third;) we are conſtrained to take the ſecond ſenſe premiſed, which is agreeable not only to the Letter of the Law, but conſonant to true Reaſon and Religion, and then our reſult muſt be, that this Clauſe of the Act, (compared with the Preface) intends to puniſh ſuch, as under colour or pretence, (as oppoſed to true and ſincere Religion) do or may meet to contrive Inſurrections.

Sir, having now, I hope, truly diſcovered the Crime intended by this Act, it now remains we examin, whether the Evidence offer'd, will be found of Kindred hereunto, ſo as to make the Defendants guilty of the Crime, and ſo conſequently to incur the Penalty. I think it beyond contradiction, that colour or pretence, as oppoſed to Truth and Sincerity, none but the Omniſcient God can take cognizance of, otherwiſe than by Overt Acts, diſcovering the falſhood of the mind, ſo that if the Informers had ſworn (as I find not) that the Defendants met under colour or pretence, and give no Evidence of Fact, either of falſe Doctrine, or ſeditious Words, or Contrivances tending to Inſurrections, the Law hath no cogency on your conſcience to credit ſuch Evidence: If you conſider the words of the Act, (*Do or may contrive Inſurrections, as Experience ſhews*) and thence gather, that though no Evidence evince that they did, yet at ſuch Meeting, Inſurrections may be contrived: I anſwer, no experience of any time or Age gives inſtance, that ſuch wicked Plots or Contrivances were forged in ſuch Meetings, where Women, Children, Perſons of all Ages and Sexes promiſcuouſly Aſſemble; nay, the Practice rather ſeems a ſecurity againſt ſuch Plots.

Wherefore my Opinion is, that this Branch of the Act doth not reach the Defendants, as your Evidence ſtands.

And for as much as this Branch is not Independant, but carries its influence into the whole Crime Deſcribed by the Act, my Opinion is, the Defendants are wholly out of the reach of the Statute; yet leſt they ſhould doubt, or my Opinion be over-ruled herein, we will ſubjoyn the words following in the Act, and then examin whether they will further charge or acquit the Defendants.

[If any Perſon or Perſons, *&c.* ſhall be preſent at any Conventicle, *&c.* under colour or pretence of any Exerciſe of Religion, *in other manner than according to the Liturgy and Practice of the Church of* England,] poſſibly an Advocate for the Informer may tell you, that the Clauſe ſuppoſeth no Exerciſe of Religion can be real and ſincere, but colourable and pretended only,

only, that is not performed in the very words of the *Liturgy*. To which I anſwer, that the ſubſequent words, *and Practice of the Church*, give a clear contradiction to ſuch a Paraphraſe, becauſe in all our publick Aſſemblies, men pray before and after Sermon, in other words than the Liturgie, and yet not reputed criminal within this Act; but for your better ſatisfaction, it may ſeem expedient we conſider how to conſtrue theſe words, (*in other manner than according to the Liturgy.*)

You know the Saviour of the World taught his Diſciples to Pray, *Mat.* 6. 9. *After this manner therefore pray ye, Our Father which art in heaven.* You find many of the Diſciples Prayers recorded in Scripture, *Act.* 1. 24. & 4. 23. and graciouſly accepted of God, and yet you never read they uſed that Form, but in other words agreeing for matter.

Now Sir, if theſe two Parallel Queſtions were put,

Did the Diſciples of Chriſt pray in any other manner than according to the Lords Prayer?

Did the Defendants pray in other manner than according to the Liturgy?

To the former of theſe, I know you will anſwer, That though the Diſciples did not uſe the form of words, yet their Prayers, did accord with, or were according to the Lords Prayer.

The ſame anſwer will neceſſarily ſerve to the latter, referring to the Liturgy, ſtill ſuppoſing your evidence offers no Accuſation againſt the Defendants Prayers diſſonant from the *Liturgy*, more than want of Form. Take this further conſideration, that the Liturgy comprehends both the Epiſtles and Goſpels, and all other portions of Scripture appointed to be read, and then let us thus reaſon, whatſoever accords with the Scriptures, (part of the Liturgy) accords with the Liturgy, and is not in other manner than according to it. Upon the 18 of *July*, for the ſecond Leſſon, is to be read 1 *Tim.* 2. *I will therefore that Men Pray every where, lifting up holy Hands, without wrath and doubting.* And upon the 30 of *June* is to be read *Eph.* 6. *Praying always with all ſupplications in the Spirit*; ſo that all manner of Prayer, at what time or place ſoever, (if in the Spirit) is you ſee allowed by, and is not in any other manner than according to the Liturgy.

We therefore again conclude that your Evidence gives no indication that the Defendants Exerciſe of Religion, was in other manner than according to the Liturgy of the Church.

It now remains we conſider the laſt words, (and practice of the Church of *England.*) Sir, I obſerve you gave the Informers a ſeaſonable Caution, (ſay you) If you ſwear the Defendants did Worſhip in other manner than according to the Liturgy and practice of the Church, it is requiſite to underſtand what the Liturgy is, what the Church is, and what its Practice is; it falls to my ſhare to reſolve you. Of the Liturgy we have already diſcourſed, it remains we inquire of the Practice of the Church, and it is impoſſible to know its Practiſe till we reſolve this Queſtion.

Queſtt

Queſt. *What is the Church of* England *intended in this Statute?*

Solut. Sir, I need not tell you the Greek word for Church, its taken for any convention of men, as well Profane as Eccleſiaſtical, ſo the Profane Aſſembly in the 19 of *Acts* 32. is tranſlated from Εκκλησια Church, or *Eccleſia*.

But Sir, it is ſafe for you and me to give ſuch interpretations of words, as our own Laws and Eccleſiaſtical conſtitutions favour, of which *I* find but two notions of this word Church, (*viz.*) one in the Book of Cannons, and the other in the book of Article, one of theſe I take to be intended in this Act, and we ſhall examine which;

That of the Canon is in theſe words, [*Whoſoever ſhall affirm that the ſacred Synod of this Nation, in the Name of Chriſt, and by the Kings Authority Aſſembled, is not the true Church of* England *by Repreſentation, let him be Excommunicated.*

Sir, after what manner the *Synod* worſhipt God, or whether at all (in that Aſſembly) is wholly forreign to your knowledge and mine, neither do I find that your Informers accuſe the Defendants for worſhipping God in other *manner than* according to the *Practice of the Synod*, wherefore this ſenſe of the word Church I know you will Explode.

2. The other Notion is in the Book of the 39 Articles, where I find Article the 19, Church thus defined, [*The Viſible Church of Chriſt, is a Congregation of Faithful Men, in the which the pure Word of God is Preacht, and the Sacraments duly Adminiſtred according to Chriſts Ordinance, in all things that of neceſſity are requiſite to the ſame.*] Sir, this Definition ſeems to carry in it a Moral and Perpetual Reaſon, ſuch as no Time or Circumſtance can Deface, and by a Synecdoche, or part for the whole, ſeem to tell you, that every ſuch Congregation in *England*, is the Church of *England*, this was ſo in Queen *Maries* Days, when the Proteſtants were outed the publick Oratories, and denied the uſe of their Liturgies, as in Queen *Elizabeths* Days when reſtored to both. Now (ſeeing Liturgies are confeſſed not eſſentially neceſſary to a true Church) it would be enquired, whether the Defendants profeſſing the Faith, Doctrine, and Worſhip of the Church of *England* as now eſtabliſhed, and denying their Worſhip to be in other manner than according to the Practice of the Church, and this in preſence of the Informers, who offer not the leaſt Evidence to the contrary, you (being alſo upon your Oath) have not reaſon or charity to judg that theſe people are ſuch a Church as is before defined.

Now I am compelled to give my Opinion in the Affirmative, Thus far we have diſcuſt the Notion of a *Church* in the Law ſenſe; it remains that we now conſider it in the Notion and Opinion of ſome private Men, and we will ſuppoſe that by the Church of *England* is intended [*The Parochial Aſſemblies of Chriſtians uſing the Liturgy and Forms according to the Rubrick,*] and hence it may be inferred, that the Defendants exerciſing Religion without the Forms of the Liturgy, have done in other manner than according to the Practice of the Church.

Sir,

Sir, I obſerved in your Letter you put a proper Queſtion to the Informers, *viz.* Whether they were preſent from the beginning to the end of the Exerciſe? whereunto they anſwered Negatively, and the Defendants not confeſſing ſuch Omiſſion: Now taking the former allowed *Axiom*, *Non eſſe, & non apparere idem eſt*; I muſt conclude

It is not ſafe for you to Record this as an Offence within this Statute upon this Evidence.

But Sir, if your Evidence had been full, (as poſſibly it may occur, in caſes that come before you in this kind) and that it ſhould be Sworn, that from firſt to laſt, the Common-Prayer was omitted; and let it be ſuppoſed, that the Prayers and Sermons are the ſame for matter with the Services done in our Churches; and you ſhould then Ask me, whether ſuch an Exerciſe be within this Act, as done in other *manner than according to the Practice of the Church.*

To which (beſides what I have already offered) let me further add,

Do the Parochial Miniſters Pray before and after Sermon without the Liturgy?

So do the Perſons we ſpeak of in the ſame manner.

Are our Miniſters Epiſcopally Ordained?

So are many of the Diſſenters.

Doth the Practice of their Churches allow of unordained Men to Preach as Candidates, for Approbation?

The Practice of our Church will warrant unordained Men (deſigning the Office to Preach, *&c.* of which the Ancient Church-Hiſtores hath given Inſtances, as *Paul* and *Barnabas* two whole years before Ordination; *Origen* for ſome time, and was therein juſtified by Eminent Fathers of the Church, viz. *Alexander* Biſhop of *Jeruſalem*, and *Theoctiſtus* Biſhop of *Ceſarea*. The like may be affirmed of *Evelpis* at *Laranda*, *Paulinus* at *Iconium*, *Theodorus* at *Cynada*. *

In our caſe the only queſtion ſeems to be, Whether two Aſſemblies, Worſhipping in the ſame manner, with this only difference, that one performs more than another, makes a real difference for manner; The Degrees of more or leſs are not ordinarily eſteemed to difference mens actions; one Miniſter Preacheth an hour, another half an hour; one reads a Homily, another Preacheth his own Sermon, and we never accuſe them of Defect in manner of their Exerciſe as differing from each other.

Thus Sir, I have given you my ſence of what you demanded, wherein I have exerciſed my faculty, not only in my particular Calling, relating to the Law, but in my general Calling, as a Chriſtian, though I know there wants not Perſons of your quality that have judged otherways, and given Preſidents thereof: But I alſo know that upon Appeals at the Seſſions, in a neighbour County, the Appellants have been diſcharged upon ſome of the Reaſons here alledged; I ſuſpect the Penalty of your 100 *l.* may ſtick in your Thoughts, though I think your danger little, yet I have ſo great reſpect for

you and your Family, to wish you so good Opticks, as to foresee future, as well as present dangers. I presume you have read the famous instances of two Persons of your quality, *Empson* and *Dudley* in *Henry* the Sevenths days, they by colour of Penal Laws (as this is) invaded the Property of the People in that Kings Reign, and in the next, *Henry* the Eighth, were Beheaded at *Tower-Hill*, and the Informers were corrected by Stocks and Pillories throughout the Kingdom, as Examples to future Ages. For your own part, Sir, Reckon your self to see well, when you borrow your Countries Eyes, and direct your Judgment by the Verdict of Juries, upon the Evidence of honest and credible Witnesses, of both which, just care ought to be had, first of Juries, that they be Empannel'd by the Impartial Sworn Officer the Law appoints; and secondly as to Witnesses, that they be of undoubted Credit, for seeing the third part of the Fines comes to their Pockets, unreasonable it is to admit of any but Persons of known Integrity for Witnesses.

Sir, Thus doing, you will secure both your own Reputation for Justice and Integrity, and also the Peace of all His Majesties Loyal Subjects; which will be according to the desire of

Your Humble Servant.

Phanatick Knave.

The Justice of Peace, & ye Councellor at Law, are both one Rogue; ye Phanatick Foole, & ye Phanatick Knave, are both one Rascall.

FINIS.

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